



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

NYPL RESEARCH LIBRARIES



3 3433 08165486 9

844

38

THE
2
✓
CHANNEL ISLANDS.

NORMAN LAWS AND MODERN PRACTICE.

"This very facility of introducing changes, should make us more scrupulous in adopting innovations, since they often bring permanent evil in their train, and compensate us only by accidental and temporary good."—*Story*.

"The silence of the law is the token of a deep and sacred sense of justice within the hearts of the people. The greatness of England was coeval with tradition. It dates not from statutes."—*Anstey*.

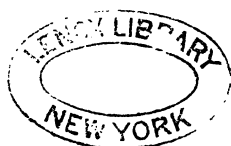
From the Portfolio for August, 1844.

David Urquhart

LONDON:
JAMES MAYNARD, PANTON STREET, HAYMARKET.

1844.

CO
(Channel Is.)
Urquhart



THE CHANNEL ISLANDS.

NORMAN LAWS AND MODERN PRACTICE.

It is no small matter for England to be in possession of islands, lying on, and almost touching the coast of France. It is no small matter for England, they being of French race and origin, to hold them on the tenure of the attachment of their inhabitants.

Notwithstanding their incorporation with the one, and their proximity to the other of the two great empires that have shaken the world by their efforts, and recast the spirit of man by their thoughts, these islands have remained undisturbed and unchanged, amidst the shock of arms and the conflict of opinion; they stand as fragments of soil, amid the channel of a torrent which has swept away all that once grew and flourished around; they appear as the eddies revolving on themselves in the midst of a rapid stream that passes away. They have not undergone the laws of England, they have not coveted the freedom of France. They present the anomaly in Europe of a people without political faction, and a society without paupers. And while in a neighbouring island, incorporated with ourselves, the laws we esteem good, and determine to maintain, are the objects of mistrust and abhorrence, these islanders exhibit

the remarkable spectacle of attachment to existing institutions, and meet our innovations with defiance.

England has a double legal parentage in the Anglo-Saxons and the Normans. Alfred, Ethelbert, and Edward the Confessor are our parents on one side, Rollo on the other. The very type of the last of these originals is preserved to-day in the Channel Islands, together with reverence, transmitted from father to son through thirty generations, for the founder and the legislator of the Norman race. That reverence is not an idle treasure, it is of common use. The name of that great man is still amongst them of talismanic power; and while no more curious specimen of legal antiquity is presented in Europe, it is an evidence of the preservation to our times of the original characters and institutions, which in us have undergone so many changes, giving to them an interest of the very highest order, and imposing upon us a dutiful respect in judging of what we were, and in innovating on what exists.

The origin of the "*Clameur de Haro*" is thus explained in the "*Chroniques de Normandie*:"—

"Pour la bonne paix et justice qu'il maintint en sa Duché, ses subjects prindrent une coustume, tant de son vivant, comme aprez sa mort, que quand on leur faisoit force ou violence ils crioyent,—Aa-Rou!"

Rou or Ro is the abbreviation of Rollo, added to the exclamation, ah! Any one engaged in any act or process, not desisting on the thrice repeated appeal, "Haro! Haro! Haro!" is liable to a severe fine, and he cannot proceed until the matter in dispute is decided by a court of law.

A singular instance of the power of this simple process, occurred at the funeral of William the Conqueror. The owner of the ground where the grave was opened, not having received satisfactory compensation, he stopped the funeral, his words are thus reported—

“ He who oppressed kingdoms has been my oppressor ; since I have outlived him, I mean not to acquit him dead. This ground is mine, and none can justly bury their dead in the ground that belongs to another. Aa Rou ! Aa Rou ! Aa Rou ! the founder and father of our race, though dead, lives in his laws.”

It was not, however, in the lifetime of Rollo that the Norman Institutions were carried to these islands. They were a part of his sovereignty, but scarcely tenanted, and subsequently ravaged, they were abandoned to the plundering of the Danes, or to the precarious protection of monkish establishments, until Robert the Third, in an expedition against Canute, had his fleet scattered by a storm, and was himself cast away on Guernsey. He was received by the Monks of St. Michael, and his fleet and force rescued and restored by the inhabitants. The importance of the islands as places of refuge and defence being thus established, the Norman Government applied itself to their settlement, cultivation, and fortification, and they were rendered strong by military works, and every liberty and franchise accorded to the inhabitants, most of the land being distributed in *franc feoffs*.

The feudal tenure and laws were not here subject to vicissitudes and disturbances, and did not pass through that disorganization and perversion which in the rest of Europe have been taken for their original character. Here their vivifying spirit is indeed extinct, but at least is it clear from what still exists, that serfage (as we understand it) was no portion of the feudal system.

On the settlement of the Crown of England on William of Normandy, the islands became united to England by their being subject to its Monarch, and have remained so up to the present time, rather a dependence of the Crown, than an integral portion of the Empire.

When Normandy was lost to the British Crown, the Islands, instead of following its example, strongly defended themselves. The union of Normandy and England, under the same crown, having deprived them of importance as stations of refuge, or as points available for attack or for defence, the fortifications had been suffered to fall into decay. Nevertheless, their zeal supplied defence, and on two occasions they repulsed an army sent by Philip already in possession of Normandy. The islands had formed part of the appanage of John settled by his father, and they had been again granted to him by his brother Richard, with the earldom of Mortain. John had supinely suffered province after province to be wrested from him, but was at length roused by the danger of his special appanage, and by their courageous defence, and after making every effort to preserve them, he repaired thither in person. In token of his gratitude he granted to them a new code of laws called the "Constitutions of King John."

These "Constitutions," the Magna Charta of the Islands, were granted prior to the field of Runymede, they were of free will, a recompense for past loyalty, and an earnest of future service. Thus, while alone, throughout the wide domains of Britain possessed by the descendants of Rollo, these islands revere his name, so also do they alone hold in respect the second establisher of our liberties.

The preamble of these Constitutions rehearsing, that "Inquisition having been made into the services, customs, and liberties of the Island" shews, as in the case of Magna Charta, that it was no new grant that was made, but ancient liberties and customs, sanctioned and confirmed. These Constitutions eighteen in number, are provisions against interference, civil, or municipal, with the Laws, Authorities, Prescriptions, and Elections of the Island. The Royal Courts are invested with the

power of trying all cases, except treason, false coining, or laying violent hands on their own officers in the exercise of their functions, and of executing sentence of death without appeal.*

A still more formal settlement was made, under the title of *Précepte d'Assize*, under Edward III. beginning as follows:—"Here follow part of the Usages, Liberties, "and Ancient Customs, used, held, and kept, in the "Island, &c. of all the time whereof the memory of man "is not to the contrary." It then rehearses, that inquest is made parish by parish into these Customs, and by each parish into the inquest of the other, and it then proceeds: "Our said Lord the King, does establish and ordain for his bailiff in the said Island, a notable and sufficient and discreet man, dwelling in the said Island," here follows three long paragraphs establishing the Courts of Law. Then it is said, that "the King shall commit, and ordain whom he pleases to the care, government, and tuition of the said island, and of his Castle and Fortresses there;" but they are in no ways to interfere with the Civil Government, and if "anyways through ignorance or otherwise they or any of them, should do or act out of error to the contrary, that by the aforesaid Bailiff and Jurats it should be redressed and repaired whenever they should be warned thereof."

"The inhabitants and *dwellers* of the said Islands, do appoint and elect amongst themselves, a Serjeant, called

* It is recorded that Judges had at one time gone from Westminster to hold the Assizes. One of the reasons for the discontinuance of them, was the difficulty of navigation and the exposure to enemies. Another reason assigned in the *Précepte d'Assize*, is the desire of granting a favour to those Islands so exposed to danger from enemies, and so faithful.

the King's Provost, to make the arrests, impeachments, deliveries, &c. They are in the like manner to elect their own Tax-gatherers.—They “cannot be constrained or compelled by any writ of the King, or otherwise for any cause whatsoever, to go out of the said island, but with their own consent.”

These grants were subsequently confirmed, more especially by Queen Elizabeth, Charles the Second, James the Second; which last was, of course, subsequent to the passing of Habeas Corpus.*

The remarkable feature of the political position of these islands is, that they should not be represented in parliament, and should protest against being bound by its laws. Parliamentary government is, in these times, considered synonymous with political freedom, and yet these islanders maintain a struggle for independence against parliament. The great principle of representation is supposed to be the peculiar character and produce of the ancient Gothic institutions; and here a people preserving more than any other in Europe the personal character of those institutions, signalize themselves by a contempt as audacious as incomprehensible of this great principle of Gothic freedom, and of modern strength. These are indeed enigmas that are not solved because weak dependencies may be overawed, or some hundred soldiers easily transported thither in steam-boats. The time was, however, when that which these Islanders now think was thought by all England—

* In the year 1832, a Writ of Habeas Corpus was issued from the Court of King's Bench to bring before it a prisoner detained in the gaol of the Island of Guernsey. No return was made to the Writ, and a deputation from the Islands of Guernsey and Jersey came over to England and pleaded the royal Charters and Constitution of John, that “No inhabitants shall be cited or summoned by any Writ or Process issued by any of the Courts in England.”

when new laws were looked upon as being different things from old rights: when the cry was “*nollumus Angliæ Leges mutari*,” and the public sense esteemed that to change laws was to destroy them. In that time Parliaments assembled, but it was for the purpose of the enforcing law against usurpation. Whoever will examine the legal position of these islands to-day, will understand how formerly there could be Parliaments, and yet no legislation; and how, as now to the people of Guernsey and Jersey, exemption from returning knights and burgesses to serve in Parliament might be a valued privilege. The custom of the place is the law of the land—the old civil code and common law of England is the rule of its judicatories, popular election supplies its functionaries, legal and municipal, and the constitutions of John, the Magna Charta formally confirmed by Edward the Third, and inferentially confirmed by all the Sovereigns of England, protect them from any undue interference, or from any tyrannical usurpation on the part of that authority of the King in Council, which they recognise as binding, but so far only as the ordinance is lawful.* They have been protected by position from usurpations of the Crown, when that Crown’s usurpation had to be feared, and they have not shared in the fancies regarding parliamentary freedom to make them now, like the rest of England, prefer an arbitrary Minister to a limited Monarch.

Before detailing the Constitution of the Islands, it may

* “The King (referring to the time of the Edwards) could not demand, as of right, the co-operation of the meanest individual until he had submitted his measures to the remonstrance and controul, and received the sanction, of his Parliament; nor even then unless that sanction was such as the parliament was by law warranted to give; that is, unless the measures were themselves lawful.”—*Portfolio*, vol. i. p. 515.

be well to glance backward at the former practice of England, with which it was contemporaneous, and which it now serves to illustrate and explain, while, on the other hand, the old law is useful for the interpretation of the facts before us.

We have already in a series of articles "on the English Constitution," established the leading features, and traced the progressive decline of those laws which have made us great; and we re-produce a passage descriptive of the Government under Henry the Second, which so nearly approaches to that now existing in the Islands, as to enable us to abridge their subsequent description.

We beg attention to the first contrast with the present time that will strike; and that is, that nothing could be undertaken by the Government until the sanction, not of parliament, but of the whole nation, and of every fragment of it was obtained. This is unintelligible now because of difference of opinion; but that difficulty would not have arisen had the practice been preserved. It is quite intelligible in the Channel Islands; for, like our ancestors, they have no idea of an obligation that they have not accepted, or consequently of a political law that they have not desired.

"The Curia Regis, Great Council, or Parliament, was, as we have seen, identical in all but name with the antient Witenagemot. It is true, that from the period of the Conquest, the Four men and Reeve, those legitimate representatives of the Township, do not appear so frequently in the King's High Court."

"Fewer of the Thaners of Hundreds, in like manner, are to be found in the Assemblies after the Conquest. But they were always represented there. Deputations were more easily congregated than the whole body; and, so far as they were empowered by their constituents, these, by their suffrages, were competent to bind the rest. The

Twelve Jurors, from every Shire, like the Echevins of the Frankish Empire, represented, in the "Placitum" where their Sovereign sat, surrounded by his Nobles, not only the collective Shire, but also every Hundred and Township which helped to compose it."

"The Conqueror, in 1070, held at Gloucester a great assembly of Saxon and Norman lords, and other wise and eminent personages, in order, we are told, that he might become better acquainted with the laws of England. In this assembly he proposed the substitution of the Danish usages, for those of the Anglo-Saxons. But the assembly, with one voice, demanded the laws and customs which they had obtained in the days of good Saint Edward. William, after some hesitation, assented. "Twelve" men from every Shire were therefore summoned, "who were *sworn* that they would well and truly declare the law, "without addition, prevarication, or concealment." A Code, or Capitulary, resulting from their presentments and declarations, was prepared and read to them, which, thus approved, received that solemn sanction of the Sovereign in Council. That Code exists, in Romance and Latin, bearing the coeval title of "Laws, which King "William granted to the people of England, after the "Conquest; being the same which King Edward, his "cousin, held before him." In the judgment of Lord Hale, the assembly of Gloucester, at which these Laws were so adopted, was as "sufficient and effectual a Parliament as "ever was held in England."

"The machinery that served for local administration, was equally well adapted for the concentration of powers. The Four Men, and the Reeve, elected in the Court Leet, or Courts Baron, of their Townships, were competent to receive, and to execute, whatever commission their fellows might think fit to give. The Twelve Sworn Thanes, or "Jurors," whom the Hundred or Burgh sent to represent

it at the Shire Court, might be authorised to concur with those from other Burghs or Hundreds, in delegating to Twelve, or to Twenty-four of the whole body assembled, the duty of representing, and the power of binding, their respective communities in Parliament. That delegation might be granted by some, and it might be withheld by others;—and it might be more or less ample according to the instructions sent. But, beyond those instructions, the Duodenary Committee of Delegates had no power to act; and, where they proved insufficient, a new recourse was to be had to the Shire Court, and thence, again, to every Hundred Court, and to every Court Baron, or Leet.”

“The quota of every Shire was indeed assessed by the Exchequer. But that of the Hundred was to be assessed by the “Four Knights,” chosen and sworn, by the “Jurors” of the Shire Court. The quota of the Township, or Vill, was to be assessed by its “Four Lawful Men,” or by more, as need required, or as the Four Sworn Knights thought fit, and these upon their Oaths, and the presentment of the Court Leet, were to make the inquisition, and seal and indent it, and so to return it to the Four Sworn Knights. These did thereupon cause the tax to be levied, upon chattels, and estates, and monies, and other matters of direct taxation,—(for indirect taxes were the barbarous productions of a later age,)—and, again, it was through the Court Leet that they levied it;—for the residents knew best the circumstances of their own vicinage, and whom to burthen, and whom to spare. Afterwards these returned to the Barons of Exchequer, the net amounts so levied under their inquisition.”

“If any of the Knights or Burgesses delegated, had not received, from their “Communities,” power to concur in the grant, their vote bound themselves indeed, but not their “Communities.” Hence, when the King summoned his lieges to Parliament, it was no unfrequent precaution

to set forth in the Writ of Summons itself the importance of the Knights, Citizens, and Burgesses, being furnished, by their respective communities, with ample powers to bind them by their votes, "that the business might not fail for want of such authority."

"The "Community" was never bound, where the "Jurors" were not unanimous, whether their "Verdict" related to judicial proceedings,—(and, to the validity of such, even at this day, the unanimity of the Twelve Men is valued as essential), or to the administration of any other branch of public affairs."

"Thus, the City of London successfully refused to render the Fifth, granted to Edward the First by the Council, in the 25th year of his reign, and ordained by the King's Writs to be levied. Thus again, although the grant of the Fifth was, by the subsequent compromise of another Council, commuted for a Ninth, the same City of London, not being present at the compromise, was not bound by it; until, subsequently, a special grant was obtained from the Mayor and Commonalty, and annexed by way of Schedule to the Charter."

"Still, it was not until the reign of Edward the Third, that Parliamentary doctrines made much progress among the people. Contemporaneous, and commensurate with their progress ever since has been the decline of every description of local administration. One by one, the barriers to the spread of centralisation have been practically abandoned; and, although they retain their legal existence and therefore their value, we affect to consider them as obsolete.

"The further we advance, we shall find a more general convergence towards one centre. Institutions, which had withstood the King and his Barons, now yielded to the Third Estate. They were useless clogs upon the energy or

ambition of their delegates. The battle of the Constitution was thenceforward to be fought within the walls of Parliament; just as, at a still later stage in the march of improvement, the battle field has again been changed to Registration Courts. The Lower House was to become the champion of the people. The churl acted unwisely, and even ungenerously, who, to preserve his own paltry local liberties, cramped and embarrassed the endeavours which so many knights, citizens, and burgesses, were making, to establish more firmly the liberties of all England. The sacrifice has been made. How has it profited the churl who made it? While local administration remained to him, pauperism was unknown. Each Hundred maintained its poor, and was adequate to that great duty. Notwithstanding that in many districts the soil was thinly peopled, and as yet vagrancy was not forbidden as a crime, still the instances of death from want were so rare, that, when they happened, they produced in the minds of all, not their barren and useless pity for the fate of the unknown wanderer, but a deep sense of criminal and inhuman neglect on the part of that Hundred, where, from the finding of the corpse, the death might be supposed to have happened. Such an event was always a matter of judicial inquiry; and, if the death appeared to the Jurors to have been really the effect of want, they made their presentment, as in cases of murder, and the Hundred was mulcted in the murder fine. These were their only Poor Laws! How far the happiness and prosperity of the churl have been since promoted, by that transfer of powers, which relieves him of his proper burthen of solicitude for the welfare of the State, let the Poor Law Amendment Act, Corn Laws, Chartism, Rebecca Riots, Irish Repeal, and the whole aspect of this Empire, in 1843, make answer."

We have prolonged these extracts, for they are so perfectly the description of the state of things before us, that we cannot refrain from giving the picture, as drawn by a masterly hand, of our own venerated antiquity, so as to bring down the halo of its respect on those very features of the administration of the islands which are now exposed to our scrutiny, and overshadowed by our reproach. The islanders reject the authority to which we bow, and which we hold as omnipotent—so did our fathers. They hold to taxing themselves—so did our fathers. They hold that the laws cannot be over-ruled by Parliament—so did our fathers. They hold that no law of Parliament can bind them, they not having given their assent, and that the King in Council can protect them from violence against even the Parliament—so did our fathers. Finally, they unite taxation and judicial functions in the same persons and courts—and so did our fathers. All these are asserted by some to be still the law of the land, and held by those same persons to be maxims of the highest force and value, capable of making great the people that professed them; and most desirable to introduce, as corrections of our present evils, if they had been alien thoughts to those who built up our state, and new remedies suggested by its actual disorders.

The islands were first organized by distribution into parishes, under William the Conqueror, so that there was wanting the original organization by township, and therefore the “lawful men,” which as the basis of municipal, was the first object of assault to Parliamentary government, and to overthrow which the parish was called into play. But on the other hand, in these islands the parish organization became possessed of the municipal functions of the Courts Leet and Baron. The representatives were twelve called Douzainiers, they assessed the taxes, and managed the local affairs, and assembled together to elect

the members of the High Court, called Jurats. The holders of feofs formerly assembled in common with the douzainiers, as in England, before the separation of the Houses of Parliament. The holders of feofs have lost this right, and the estates of the island are now composed of the douzainiers, and two constables from each parish, who elect the Jurats for the "royal court." These are composed of twelve, to which are added the Bailiff, appointed by the Crown, the Rectors of the parishes, the Queen's Attorney-General, and one Constable from each parish. These are members for life, but removable by an order of the Privy Council;—they administer the laws, and exercise, without control, the functions, civil and judicial, which have been by the various Charters vested in their hands.*

The authorities have the right of raising money for the public service of the Island, not at what is called the *general assembly* of the Island, which only meets for the election of Magistrates, but at a Meeting of what is called the *States of Deliberation*, where the representatives of each parish have one collective voice. Here is preserved the record of that unanimity of public measures found in ancient Governments, and which is incomprehensible at the present time, and is therefore disbelieved, instead of prompting enquiry into its cause.

By the Report of a Commission sent over in the year 1811, it appears that the mode of electing the Jurats has varied from the time of the Charter of John, first by uni-

* "The royal court is a court of common law—a court of equity—a court of admiralty—a prerogative court—a police court—a coroner's court—a grand jury—a petty jury—a court of judgment—a court of appeal—finance—building—road-making—and numerous other characters."—*Bouditch's State of the Laws of the Channel Islands*, p. 16.

versal suffrage, secondly, by returning three persons, of whom the States themselves choose one, and lastly, by the Jurats themselves, in conjunction with the various officers delegated by the Crown—the Procureur, the Viscount, and the Advocate.

It is the mode of collecting taxes that fixes the value of institutions, and the authority of the different bodies, as in the Channel Islands at this day, where the taxes are collected in an indirect manner, the power and utility of local bodies disappears, and the value of the laws themselves is effaced. In fact the Common Council or Parliament loses its solemn and legal functions, and the executive in all its operations frees itself from the obligation of obtaining the previous concurrence and assent of the nation to the nation's acts. Intelligent interest among the people, consequently disappears, while intricacy and confusion is spread over the various state operations, whether as to the purpose for which expenditure is required, or as to the reaction on the circumstances, opinions, and character of the people, of the mode in which the revenue is raised.*

The islands have resisted the registration of such general acts as would have affected their industry, and have overthrown the direct and legal assessment of taxes. They refused to register the Navigation Laws of Cromwell, and the Corn Laws of a later time, but this was by no desire to escape from burdens, for they seem to have then borne them in rather extreme proportion.

A Commission sent, in 1607, by James the First, to inquire into the state of Guernsey, has left us valuable financial details, from which we ascertain that the taxes of that island amounted to £1,400. Besides this, there

* "No person under the Law of Excise can be properly called a freeman or an Englishman."—*Craftsman*.

were certain provisions to be furnished to the governor, cattle, carts, boats, and labour to carry stone materials for repairs of the fortresses. There was also military service—*every person worth 4l. a-year* had to serve and to provide a military dress and weapons at his own expense, and those possessing 30*l.* a-year were to furnish a man and horse or three foot soldiers, and those of greater fortunes in like proportion. The taxes paid in money were, therefore, but a small proportion of the burdens of the island, and those money taxes were all *direct*. There are no items of indirect taxes set down—unless it be port dues—but these amount to but 40*l.* The attachment of the islanders, therefore, to their laws, as it was no pretext to escape from burdens, so also does it shew that indirect taxes are not necessarily popular because they disguise the amount, and prevent inquisitorial scrutiny into the circumstances of individuals. Nor are the islanders singular in this respect. We have slipped gradually, and in the course of centuries, and in the midst of great convulsions, and crying wrongs into our present laws; our judgments have been silently and progressively changed. But those on whom, without this gradation, this system is brought to bear, rebel against it, as the most intolerable of wrongs. Thence the energy of resistance in the only other population of Europe that have preserved ancient traditions, “the Basques,”* to our vicious systems, termed “liberalism,” and “constitution.” We cannot conceive the thoughts of the recusants, are embittered where we ought to reflect, and becomes foes where we ought to study; or if some amongst us commend, it is because they fancy such people are partisans of another phantom of the day—“Monarchy” or

* The Basques, however, have preserved the substance with the shadow. They are besides not too minute for separate resolve and action, and are not inundated by visitors and settlers.

“Legitimacy.” Similar attempts are profoundly demoralizing India, corrupting Greece, and in Turkey are preparing for Europe, through that devoted empire, wide and enduring desolation.

The refusal of the islands, in 1805, to obey an Act of Parliament (the Smuggling Bill), occasioned a debate in Parliament, in which was raised for the first time the question of privilege of Parliament, and prerogative of Crown, as applied to these dependencies. On the one hand, was contended that the islands were not portions of the British territory, but the hereditary possessions of the King, as Duke of Normandy. Lord Chief Justice Hale had called them, “not a part of the realm, but a domain of the Crown;” and, consequently, as in the case of the Hanoverian domains, the Legislative power vested solely in the King. On the other hand, it was asserted that as the King could only pass laws with, and by, the consent of Parliament, the Constitution of the realm would be infringed by the exercise, on the part of the Crown alone, of Legislative functions, and it was urged there were precedents of Legislative authority over these islands at a very early period. The first of these occurred in the reign of Edward the First, when on an appeal from the island against their Baillies, they are cited before the King to appear, and to answer in his next Parliament.*

Now it has to be observed that these Islands were not Colonies established by Law of Parliament, and that therefore as Colonies the Law of Parliament could not apply; that they were not integral portions of the British Empire, and did not as such return Members to Parliament; and that by the constitution of this realm no portions of the domains of the Crown were subject to the Law of Parliament, except such as responded and assented by

* Riley's *Placita Parliamentaria*, 471.

their representatives, or as we have said when dealing with the general powers of Parliament:—"The '*Terra Regis*' or '*Lords in ancient Demesne*,' as they were not represented, so were they not bound by Parliament. They were in no way subjected to the jurisdiction of the '*Curia Regis*,' nor of any other court out of their respective domains."* Parliament reduced to complete subserviency to itself the different districts of England, which did not originally send Members to the general Parliament, though it did not then occur to the Parliament to exercise its authority over those portions of the Empire, until they were induced to be represented.

The submission of the Islands to appear before the King in Parliament was at a period when the present objections did not exist. Then Parliament did not make laws affecting the Ways and Means, and still performed its functions of Common Council. It is not against Parliament as it was that these Islands appeal, but against Parliament as it has become: not against Parliament the redresser of grievances and the bulwark against tyranny—but against Parliament become the chief grievance of the land, and the tyrant not only but the corruptor of the people. The Privy Council, whose authority they admit, is itself but a standing Committee of Parliament. The very fact of their resisting Parliament, while submitting to the Council, marks the change effected in the Parliamentary constitution. It is very true that the Parliament can now command a King, but it is so because the Legislative authority of the Monarch is usurped. It is not the King in Council but the Minister, and therefore the Parliament that dictates the acts of the Privy Council, but it is so because the Parliament usurps. It is

* Portfolio, No. IV.—"On the English Constitution."

very true that the Islands, when they appeal to the Privy Council against the Parliament, appeal to a phantom against a reality ; but it does not therefore follow that the breach has become the law.

Lord Coke was of opinion that the Law of Parliament had no force in the Islands, unless they were especially mentioned in it, and that registration, as is contended by the Islands, is not necessary to give validity to an act. But if the Law of Parliament has no force except upon certain conditions, the force given to the Law of Parliament is by an exception ; but if it be in the power of Parliament to make that exception, then does the Law of Parliament rule these Islands. The Parliament, however, in the debate referred to, adopted this conclusion, that the law of Parliament did not rule, and yet could be made to rule, and inserted the names of the Islands in the Smuggling Bill.

An order in Council of July the 1st, 1831, was passed, wherein it was ordered by his Majesty, that whenever an Act shall be passed in the Parliament of Great Britain, relating to the Islands of Jersey and Guernsey, they shall be transmitted by the Clerk of his Majesty's Privy Council, signifying his Majesty's pleasure to publish the said Act, and to cause the same to be carried into due execution.

By this order has the Prerogative of the Crown effaced itself in as far as it could, and the *non sequitur* of the argument of Lord Coke been practically enforced.

The Channel Islands have appealed to the Council against the Parliament, but in the struggle that ended in the separation of our American Colonies, the appeal was to the Parliament against the Parliament. The United Colonies appealed to the old law of Parliament against its new enactments—in fact they attempted that resistance to the usurpations of Parliament, which had

been severally attempted centuries before by each separate section of England. Separated by an ocean—numbering two and a half millions, and being united amongst themselves, they were successful. They did not indeed rescue England, but they saved themselves; separation of the parts only ensued, not restoration of the whole state. Here appears the tendency of the usurpation of Parliament to disperse the state, to scatter its fragments. Worse than scattering is the holding together the portions of England by the destruction of the constitution of England and the free-born rights, and therein the character of Englishmen.

The North American colonies did not indeed appeal as the Channel Islands in their weakness have done from the Parliament to the Crown. It was felt, nevertheless, that their liberty was a slur on Parliamentary pretensions, and that to suspend the effects of these enactments, would have been to increase in that region, and, therefore, throughout the empire the royal power and prerogative. We refer on this subject the reader to an article on the *non obstante* prerogative, under the title of “The English Constitution, No. 4,” (Portfolio, Vol. 2, p. 294) wherein is quoted the following words, from a speech of Lord North, on the 27th Nov. 1781 :—

“ Had that been their object (of the Ministers to add to the power and influence of the Crown). *they had thrown away and rejected the opportunity.* It was not the prerogative of the Crown, but the claims of Parliament, that America had resisted. It was, therefore, to preserve the supremacy of Parliament, and to maintain its just rights and privileges, that they had engaged in the War, and forborne the offer of advancing one branch of the legislature, to the dominion of America, independent of the other two.”

What means advancing *one* branch of the legislature at the expense of the other two? Was it not in the power of Parliament to abstain from enacting crimes? Was it, therefore, a question between Parliamentary crime and regal power? So it would seem by the statement of Lord North. And again—the *two* branches. Had the Lords any thing to do with the money-bills? It was most clearly a subjecting the two branches of the legislature to the purposes of one. It was in furtherance of the designs of the House of Commons against the Peers and the Crown, that *its Ministers* involved us in acts that drove the colonies into revolt, and in a struggle that lost Britain those splendid possessions, entailed on her £100,000,000 of debt, and brought upon Europe a war of thirty years. Nothing could be less republican, or more justly loyal, than that resistance which has ended in American republicanism.

Now the name of the Crown is prostituted in a more direct manner, and made by positive dictation to renounce its own prerogative over willing subjects, and hand them over, despite their resistance, to the tender mercies of this factious and contemptible assemblage.

The mania of our times is law making; it is a duty to make laws—the business of the Session is rated by the number of laws that are turned out of hand. Another maxim is uniformity.* A Dog Cart Bill is passed from local causes extending fifteen miles around London: a Dog Cart Bill for the whole of England is introduced

* The *Times* has been labouring to poison the public mind against these Islands, and yet it says “The strength and cohesion of the various dependencies of the British Empire, are based upon a tolerant system of all the varieties of local freedom, and pre-eminently respectful of local privileges, rather than upon the arbitrary rule of strict subjection to the Laws and Institutions of the mother country. But although we deprecate any wanton interference, &c.”

upon the ground, that it is needless to have the one unless we have also the other. A Dog Cart Bill will become an evidence of civilization, and we will have an Intervention in consequence to civilize the Kamtschatdales. Poor Laws have produced enormous and recognised evils in England: an argument for introducing the like into Ireland and in Scotland, is their existence in England! A reformer of the laws of the Channel Islands, exclaims:—"Why should Jersey be free from a search on shore, any more than Southampton, when the Act of Parliament applies to both—are they to put at defiance enactments of the British Parliament? All officers, whether of the customs, army, or navy, may seize goods instanter, and not wait for Mr. Sheriff this, or Mr. Sheriff that, but may after such seizing, and in case of resistance insist upon having the superior aid of these notable functionaries." One would have thought that an Englishman, jealous of his rights, would have seen in this remnant of old practice, freedom superior to that which is enjoyed by his country at this present hour; and that he should rather have sought to apply the rule of uniformity in an adverse sense, or at all events to have preserved to future generations this record of other times, for comparison if not for instruction. But there is no despot like the slave.

Notwithstanding the abuses which have directed public attention to the Channel Islands, they present us results which are unwonted and satisfactory.

Mr. Berry in his history of Guernsey, says:—

"The stranger, who is unacquainted with the Island, its situation, and extensive beneficial trade, and who, through the channel of a magazine, newspaper, or gazetteer has perhaps acquired a prejudice against it, as well as its inhabitants, constitution, and government, will be agreeably deceived when he finds that Guernsey, of which he conceived so mean an opinion, though of very

small extent, has many valuable privileges and advantages that larger states do not enjoy ; and in point of situation and improvement, is one of the most fertile, flourishing, and best cultivated spots of ground in Europe."

A former Governor, Major General Doyle, has expressed himself thus in an Assembly of the States. " If there be one country in the world where a gaol is less necessary than another, this is that country ; the innocence of the people is almost proverbial, positive crime is unknown amongst the natives, the office of your gaoler is a perfect sinecure, and your executioner if he wants employment must hang himself."

The picture may be over-drawn, but the features must be there of which this is the suggested portraiture ; in fact on the excellence of the administration of Justice depends not the morality of a people. The most moral people are sometimes those amongst whom justice is administered with least integrity, for indeed codes and judicatures are made to restrain the evil intention, but it is upon the civil constitution of the state, that depends the nurturing of the intention. Where the people are not dissevered by continual governing interference, where the relations of society are not disturbed by a false financial system ; where the intelligence of the people is preserved and its universal care is called forth by managing its affairs, there are the affections strongly knit together, and it is out of the affections of men that grows their morality. Take from them the election of their magistrates, impose upon them custom-house men, and excisemen, give the fictitious characters of crime to common acts, because they interfere with a pretended system of revenue, make Poor Laws and Boards of Commissioners to destroy local government and common charities, and yet give to that people the most upright judges, the most independent bar and learned bench, and you will

have to reap a harvest of crime, and to dwell in a storm of faction. Let on the other hand the simple frame work of society be preserved, and even though the judges be corrupt or the laws absurd, still will you have morality the rule of men's conduct. It is therefore with a sparing and cautious hand, that even the abuses of such a people have to be touched. Take the aggregate laws and the aggregate results, and do not think you can interfere with the part without endangering the whole. It is not the people of England who can interfere to improve the condition of the people of Guernsey and Jersey. It is from them that they might learn a lesson. This we say, while admitting, nay, calling for a reformation of the judicial functions and the Civil and Criminal Laws of the Islands. Let not British subjects be excluded there from privileges that the Crown of England confers—let not the anomalies of the succession of property that have been remitted from the Roman Laws by the Code of Justinian, from the Eastern Laws by that of Mahomet, still continue depressing unduly the position and therefore the character of Females—let not arbitrariness be suspected in the judges, false rules of evidence be adopted in the collection of evidence, or the law of debtor and creditor be exercised in an uncertain and oppressive manner. But in effecting the changes, let not the self-respect of the Islands be broken, that first condition for citizenship, that bond and stay of the constitution, and of men—above all, let not the discredit attaching to the administration of justice affect the due rights and prerogatives of the island, which to respect in them is a means of strengthening both our judgment and our liberties. In a word, let there be restoration of old rights, not enactment of new laws. The old rights are the free municipal constitution of the Royal Court.

In supervising and correcting, let us have recourse to precedents, as when on former occasions the same necessity arose. The prerogative of the Crown, may it not be exerted as heretofore, for the good of the subject,—may not the present Queen exercise as popularly that prerogative, as Charles II. as shewn by the following letter?

“For reducing the Laws and Customs of the Island to a more certain form, which by disuse or long continuance of time, or any other means have grown into obscurity and uncertainty:” “His Majesty is pleased that there shall be a Commission of some select persons among you for that purpose, by whom the said collection being once made and sent over, it shall be considered of by such persons of rank and judgment, as his Majesty shall be pleased to appoint.”

Before the Commission of 1811, the late Bailiff, and the Attorney General of Jersey, Sir Thomas Le Breton, gave the following testimony.

“Coinciding as I do with what has been said, we have a court composed of judges not conversant with the principles and practice of the law, granting that they are good and honest men, will pronounce judgment according to their own individual ideas of justice and equity—such a practice will supersede all law, and substitute in its stead an endless variety of fanciful notions, to the great encouragement of every kind of chicanery, and to the great alarm and danger of all those over whose properties and lives the royal court of this island has jurisdiction.”

We quote this passage as shewing the character and limit of the evils complained of, viz. ignorance of law and liability to bias in its administration; and notwithstanding that the same persons have to discharge every other conceivable function of Government, those of a military kind excepted, there seems no complaint springing out

of this wide field. The management of the islands in other respects, is so simple, that it presents no difficulties, and affords no field of debate ; this is saying for it the utmost that can be said for any system.

The abuses here are then the reverse of those in England. With us the administration of the law, the integrity and knowledge of judges, is the only portion of the functions of the Government that is performed in a business-like manner ; quietly and effectually producing its results, and consequently producing no difference of opinion in the nation. Every other part, field, or object, presents but confusion in practice, doubt in judgment, difference in opinion. All things are liable to daily change, from the constitution of Parliament, and the prerogative of the Crown, down to the administration of the humblest charity, and the government of the most obscure hamlet ; and that liability to change comes from the withdrawal of affections : men's affections are withdrawn from laws and institutions, when they cease to derive benefit from them, but the chilling of affections does not give wisdom to restore. These Islands present the exact converse, the administration of the laws liable to abuse—but in all other respects attachment to their institutions, and instead of the craving for change, that characterizes the rest of the Gothic nations, their only dread is being interfered with.

But the passage above quoted from Sir T. Le Breton, presents us with other results. The law he says, is superseded by a certain practice, that of pronouncing judgment “ according to their own individual ideas of justice : ” — that very practice that gave rise to the laws of England ! To our fathers every thing was law. This early practice is the fountain whence the learned draw—is the basis on which the laws rest,—a treasury where the poor may become rich,—the arsenal where the patriot may find weapons. These ancient oracles reveal things past, and give power over

events to come; they have the secret of gathering sand into rocks whence empires may be built; here is the talisman that takes the mist from the eye, the load from the limb, and the sickening from the heart, it is the ladder which good angels lay down that we may rise from out a polluted and darkened air, that breathing and seeing freely, we may learn to love the life that is given us, and the light that is shed upon us.

We are changed from these men, and therefore misjudge the character of these institutions, and therefore instead of carefully reconsidering and with knowledge restoring, we will recklessly destroy from the moment that our inertness is conquered, and we set about legislating. It is true, that these ancient sacred things suffer from misrepresentation of them in the case before us,—the cause thereof is evident to whoever will look to the practice itself, of which we have here the abuse; those who administered the law, were the duly elected of the community, and though holding office permanently, they were at any hour liable to be displaced,—such were the douzainiers, such the jurats, whose name like that of jury, comes from the oath taken to the constituents, to adhere strictly to the letter of their instructions. On the legal character of the institutions of those times, which only means the sense and integrity of the people, we must again borrow from the already quoted authority:

“The conviction of the absolute supremacy of justice, not only over tribunals where controversies were liquidated, but over all the concerns of life, public or private, was at that time deeply seated in the bosom of Englishmen. The judicial occupation was familiar to all. Law was then a habit, a ‘custom,’ and men could no more divest themselves of it, when they entered upon the consideration of *public affairs*, than when they sat in judgment. Later times have marked a notable distinction that is said to

prevail between the laws of the State, and the duties of Statesmen. Perhaps it is reserved, for the times which are to follow, to discover a similar distinction between the laws of the land and the duties of Judges. Westminster Hall is indeed still the seat of Public Justice. But so formerly was Parliament. The desecration to which we allude is not more improbable than that which we have witnessed. The alarming growth of modern degeneracy might even occasion the doubt whether the improbability be not, in fact, much less.

“Those judicial habits of thought admirably fitted the Great Council to discharge, in the presence of their Sovereign, the duties which belonged to it. The imposition of Tallage, the Commission of Array, the Grant of Scutage, the concession of the Aid or the Subsidy, were all and each solemn and deliberate functions, which it depended, not upon the caprice of the Parliament or Monarch, but upon their common appreciation of the emergency, and their common interpretation of the law, to perform. It was not sufficient that the ‘Common Assent’ was given, to the new ‘Aid, Mise, or Prise,’ demanded by the Monarch. Unless it were for the ‘Common Profit of the realm,’ that assent did not make it lawful. Even where legal as to purpose, it did not follow that it would be legal as to assessment. There were so many grounds of exemption. Some of them have been enumerated already. But there were others founded upon tenure; others claimed under Charter; others acquired by prescription.”

May the inhabitants of the Channel Islands take home these words of instruction and of warning:—

“It is the fashion to speak of supply as though it were a privilege of Parliament. It is not a privilege but a task! When Parliament understood it in that light, it was a task well performed. Every vote of supply was in the nature of a verdict. The Monarch expounded to the

assembly the circumstances of the case, and explained the measures in contemplation. It was for the Great Council to consider whether these constituted such a case as justice would approve, and the laws warrant. If their 'Verdict' were unfavourable, the grant could not be made. It did not depend upon their good will to do that which the laws prohibited. If their 'Verdict' were favourable, the Monarch obtained, indeed, a grant, but only such an one as Parliament had power to make. Hence it was always necessary to determine the extent of their powers, and, in the examination of that question, countless others, involving the most delicate subjects of positive and natural law, had to be canvassed and ascertained."

"The Exchequer, into which the instalments as received were paid by the 'Elisors,' was but an office, or department, of the Council, and for their application of the monies so received, the Barons were as much accountable to them, as the Accountant-General of the Court of Chancery now is to that Court. Let us add, in order to complete the analogy, that it was no more in the power of the Council to consent to a diversion of the supplies in the King's favour, than it is competent to the other Court now, to consent to any misappropriation whatever of the funds under its control, and belonging to its suitors."

"In these proceedings there is little that offers any analogy to the ordinary occupations of modern Parliamentary members. Neither should this be wondered at. The Great Council of the realm, in those days, was the Remedial Court of the whole realm. Its province was administration of the law, not law-making. The control of taxes and expenditure, the supreme direction over public affairs, civil and military, at home and abroad, and the dispensation of justice between man and man, between prince and subject, where the rigour of the Common Law

denied relief, were the proper functions of an assembly, where the King or his Justiciary presided." "It professed to proceed from old and acknowledged principles, by a regular and logical deduction, to their equitable application to cases, which were otherwise not provided for. There is not one of the earlier statutes to which this observation is not strictly applicable. They were rather judgments than statutes, in the modern acceptance of the word. They bear a strong resemblance to the decrees of our Courts of Equity."

"For centuries afterwards, the people still continued to attach to the name of Parliament, however degraded by later associations, not only the ideas of equity and relief, which ought still to appertain to it in its political capacity, but those also which are now attached to the Court of Chancery alone. Long after the complete establishment of that Court, in its equitable jurisdiction, the familiar speech of the day preserved the remembrance of the wider, more remedial, and more powerful authority, whence it sprung. In defining their respective jurisdictions, the very Judges continued to employ language, which their predecessors had employed, and in those remoter days, with propriety.

"Thus, so late as 1692, Lord Holt, in commenting on his inability, sitting at Common Law, to grant relief under a purely equitable title, observed, 'Wherefore it would be 'convenient for the heir to seek remedy in Parliament, 'according to Moore, 784.'"

"The terms, 'Parliament,' and 'Equity,' in his familiar language, were, as it were, convertible, and indifferently applicable, to denote that jurisdiction which was the great rival of the Common Law. Once indeed they had been synonymous, but it was in days when Parliament was still mindful of that highest and most solemn of its functions, the public dispensation of justice. Those were the days

in which it used to be written,—and then it was written well,—‘let what things ought to be redressed in Parliament, be there redressed, and what things do touch the Common Law, by the law of the realm, be elsewhere redressed!’

“While this continued to be the true character of Parliament, that body was still the Great Council of the realm. The new name it had chosen was indeed an omen of bad import, and perhaps of incipient corruption. But the change as yet did not spread beyond ; Parliament was still Council. It had not as yet made itself that mere thing which its name, of a new coinage, (less appropriate then than now) denoted—an eloquent, but by no means deliberative assembly!”

To the danger for the constitution of these Islands, resulting from the excitement on the subject of these legal proceedings, at a time when public opinion is running after change and is contemptuous of Tradition, is further added a contest between one of the Islands and its Governor. Instead of proceeding in the proper and ordinary course of effecting, by just authority, an alteration where the practice is objectionable, the Governor on a judicial question proceeds to exercise an illegal authority, directed against the very constitution of the Islands themselves; the Islanders, differing from Englishmen, have not submitted to this usurpation, and they have the opportunity of bringing their case judicially before the Privy Council; an opportunity of which they have availed themselves, and we reserve for a future number the consideration of this matter.

We have on former occasions pointed out the abstinence from interference with the Canadians, as compared with other portions of our Empire, and also with the Red Indians, as the cause of the remarkable attachment of both these populations to England; we have shewn how in

later years in respect to the Canadians* we have departed from this wise and just maxim, have interfered with them, and in proportion as we have so interfered, justified the wisdom of our previous course, by the evils that have been the result of an opposite practice.

The only article that has appeared in a periodical on Channel Islands, attributes the troubles in which we are involved in other regions, to our *not* having interfered, and thus prepares the reader for the subject with which we are now dealing. It says:—

“In all the conquests made from our enemies we have granted them the privilege of living under the laws and religion of the country to which they previously belonged, without considering all the difficulties and dangers that might ensue from such an arrangement; these have gradually developed themselves in the progress of time, and their fruits have shewn that the result has been discontent and revolt. Need I point out as proof Lower or Eastern Canada and the Cape of Good Hope? In the first of these the evils seem almost beyond remedy, and what it will be in the second and more recent case remains to be proved.”

Thus reading the facts wrong, experience is the reverse of beneficial, and makes us perfect only in error.

* See “England in the Western Hemisphere,” in Portfolio, No. VIII. For the case of the Red Indians, see Portfolio, No. IX.

THE END.

